United States Court of Appeals

for the Second Circuit

SUPPLEMENTAL BRIEF

76-6145

Docket No. T-6462
76-6145

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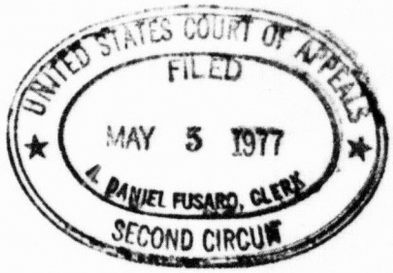
P/S

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT



LOREN E. DAMON, JR., by his
next friend, VIVIAN F. DAMON

Appellant

v.

SECRETARY OF HEALTH, EDUCATION
AND WELFARE

Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT

OF THE DISTRICT OF VERMONT

Docket No. 74-161

SUPPLEMENTAL BRIEF OF APPELLANT

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At oral argument in this case the Court raised the question as to whether the alleged equal protection denial was "de minimis" in that retired persons, being elderly, would not be likely to conceive children of their own, and thus any effect on the Social Security Trust Fund by persons in this class conceiving children solely to get additional benefits would be insignificant. Appellant would like to note several points in this regard in this brief.

First, even if it is accepted by the Court that some retired persons might adopt children solely to qualify for additional benefits, which appellant thinks is highly questionable, it is submitted that the effect on the Trust Fund would also be "de minimis". No evidence is in the record to indicate how many persons the Secretary feels would be so motivated. Moreover, since Vermont, like most, if not all other states, has stringent laws regulating adoptions, see 15 V.S.A. §431 et seq., it is highly unlikely that a significatn number of retired persons who were seeking to adopt a child solely to qualify for additional benefits would have their petitions for adoption approved by the appropriate state agency and state court. Comprehensive investigations, reports, and trial placements precede an approved adoption, see 15 V.S.A. §§437, 440, 443, and thus it is unlikely that an unscrupulous person motivated solely by the desire to obtain additional benefits would ever be permitted to adopt a child. Moreover, just as it is unlikely, although not impossible, for retired persons to conceive children

of their own because of their age, it is unlikely that many retired persons would be approved as adopting parents, once again because of their age. If a retired couple in their 60's adopted a young child, the parents would be in the mid-70's when the child was a teen-ager, and this age factor would definitely work against the approval of many adoptions by retired persons. Thus, it is submitted that there would be at most, a "de minimis" effect on the Trust Fund by retired persons adopting children, and this would be no more than that of retired persons conceiving children, and thus this is not a basis to reject the constitutional challenge.

Second, the Court's question ignores the fact that retired persons could obtain step-children through marriage, easier than through adoption, and thus the effect on the Trust Fund of retired persons acquiring step-children solely to get additional benefits would be greater than that of retired persons adopting children solely to get additional benefits.

Finally, the question of the "de minimis" effect on the Trust Fund of retired persons conceiving children ignores the fact that the statute in question, 42 USC §402(d)(8) deals with disabled workers, as well as retired workers. Since disabled workers can be of any age, and since the inability to work does not equate with the inability to conceive children, there would not be any "de minimis" argument here regarding natural children versus adopted children or step-children.

Respectfully submitted,

Dated: 5/3/22

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